

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Serial No. 10/049,157
PCT/US01/14771

Applicant: Detroit Steel Products Co., Inc.

Filing Date: May 3, 2001

Title: Vehicle Suspension Systems

Attorney Docket No. 02004.047

To: PCT Legal Office
Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

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July 10, 2002
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Christopher J. Fildes
Registered Attorney


Signature

**REQUEST FOR RECONSIDERATION OF DISMISSAL WITHOUT PREJUDICE OF
PETITION FOR REVIVAL OF AN APPLICATION ABANDONED UNAVOIDABLY OR
IN THE ALTERNATIVE PETITION FOR REVIVAL OF AN APPLICATION
ABANDONED UNINTENTIONALLY**

PCT Legal Office
Assistant Commissioner for Patents
Washington, D.C. 20231

08/22/2002 LLANDGRA 00000097 10049157

01 FC:141

1280.00 DP

07/15/2002 LLANDGRA 00000028 PCT/US01/14771

01 FC:141 Sir: 1280.00 DP

The Applicant in the referenced application hereby respectfully requests reconsideration of the PCT Legal Office's dismissal without prejudice of Applicant's Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a).

Adjustment date: 08/22/2002 LLANDGRA
07/15/2002 LLANDGRA 00000028 PCT/US01/14771
01 FC:141 -1280.00 DP

Applicant filed the referenced patent application under the PCT on May 3, 2001 claiming May 4, 2000 priority. The Applicant made an early decision to request an international preliminary examination according to the PCT. In accordance with usual business practices, on November 5, 2001, Applicant's representative deposited the Chapter II Demand, a Fee Calculation Sheet and a check for \$887.00 together with a return postcard as first-class mail at the mail desk of the United States Post Office in the City of Saint Clair Shores, Michigan. The signed Certificate of Mailing found in the Transmittal of Demand serves as proof of this mailing (a copy is attached as Exhibit 1). Allegedly due to the United States Patent and Trademark Office's treatment of its mail prior to opening it, which practice apparently began around the end of October or beginning of November as a reaction to an anthrax threat in the Washington, D.C. area, the USPTO did not open the Applicant's correspondence and/or did not stamp the return post card included with the Demand as "received" until January 18, 2002 (a copy is attached as Exhibit 2). Applicant therefore obtained a filing date of January 18, 2002 for the Chapter II Demand, which was beyond the December 4, 2001 due-date for the Demand and also beyond the January 4, 2002 due-date for entering the 20-month national phase. This would mean that the Applicant's application had become abandoned. Applicant's representative received the return post card at its office on January 31, 2002. Realizing that the Chapter II Demand had taken two and one-half months to be "received" and was subsequently well past due, Applicant's representative immediately filed on February 1, 2002 its Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a). Applicant desired (and continues such desire) to avoid the abandonment of the application and/or to receive a timely filing date for the Demand. On June 14, 2002, the PCT Legal Office dismissed without prejudice Applicant's petition under 37 CFR 1.137(a) for revival of an application abandoned unavoidably. Applicant's representative now respectfully submits this Request for Reconsideration within the two-month time period allotted for such a request.

ARGUMENTS

The PCT Legal Office has determined via their Dismissal Without Prejudice that the Applicant has failed to demonstrate only one of the four elements required under 37 CFR

1.137(a) for a successful petition for revival of a patent application on the grounds of unavoidable delay: "A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable." Applicant believes it has made a sufficient showing that the entire delay was unavoidable.

To determine whether the delay was unavoidable, decisions have adopted the reasonably prudent person standard, cited by the PCT Legal Office as follows in part:

It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In this case (PCT/US01/14771), Applicant's 19-Month Chapter II Demand was due on December 4, 2001. Applicant deposited the Chapter II Demand for filing in first-class mail one month earlier, on November 5, 2001, addressed to the proper address prescribed by 37 CFR 1.1. Applicant reasonably believed that this was more than a sufficient amount of time for the Demand to be received by the USPTO in a timely fashion. It is reasonable to expect that correspondences deposited in the U.S. mail will arrive at their destination approximately two to five days after deposit. Hence, a reasonably prudent person, relying on the "trustworthy agencies of mail," would expect that a correspondence sent in the U.S. postal system would reach its destination within one week.

Due, however, to an alleged anthrax threat in the Washington, D.C. area, outside the USPTO in Arlington, VA, and unbeknownst to Applicant, the mail sent to the proper USPTO address stated in 37 CFR 1.1 was received and then shipped to another location. From that location and months later, the mail was returned to the USPTO and subsequently not attended to by the USPTO until apparently January 18, 2002, the date that the USPTO stamped the return post card included with the Demand as "received." This constitutes an "unforeseen fault" of the agency of mail that caused a "failure," namely that Applicant's Demand was "received" by the USPTO months after it should have been. At the time Applicant submitted the Demand, it was unforeseeable that the alleged anthrax threat in the Washington, D.C. area would affect Patent

Office operations. Further, Applicant contends that the USPTO did not begin to post official notices on the website until about November 9, 2001, which was after Applicant mailed their Demand. Moreover, a reasonably prudent person should not have to check an internet website for the status of an entirely different instrumentality that he has been reasonably relying on for years. Even more, Applicant contends that their Demand did reach the USPTO on time, but instead of being opened, was shipped under the possession of the USPTO or its agents to another location for an anthrax treatment that took two months to complete. These actions were outside of the control of the Applicant as well as outside the expectations of a reasonably prudent person. In sum, the unforeseen failure of the mail system at the USPTO address unavoidably caused Applicant's patent application to go abandoned.

For these reasons, Applicant submits that the entire delay was unavoidable due to the extraordinary circumstances and delays within the U.S. mails. Therefore, Applicant and its attorney respectfully request that their Petition for Revival of an Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a) be granted.

In the alternative, Applicant petitions under 37 CFR 1.137(b) for revival of an application for patent abandoned unintentionally. Applicant submits that pursuant to the preceding facts and argument as well as the facts and argument delineated in the original petition under 37 CFR 1.137(a), the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Applicant has included the required petition fee of One Thousand Two Hundred Eighty Dollars (\$1,280.00).

Respectfully submitted,

Detroit Steel Products Co., Inc.

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